

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/06/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-000438

FILED: _____

CATALINA VILLAGE MOBILE HOME PARK MARK A TUCKER

v.

KEITH HESS

SHANE L HARWARD

PHX JUSTICE CT-WEST
REMAND DESK CV-CCC

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the memoranda submitted.

The underlying action arose out of a forcible detainer complaint against Appellant, Keith Hess, in which Appellee sought immediate possession of the mobile home space occupied by Hess, for his irreparable breach of the parties' lease agreement; Appellant allegedly stole a neighboring tenant's automobile.

The first issue to be addressed is whether the lower court erred in finding Appellee's notice of termination of the rental agreement sufficient. All evidence will be viewed in a light

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most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.¹ If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.² An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.³ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁴ The Arizona Supreme Court has explained in *State v. Tison*⁵ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁶

This Court finds that the lower court's determination was supported by substantial evidence. Appellee gave sufficient notice to terminate Appellee's lease, as required by the Arizona Mobile Home Parks Residential Landlord and Tenant Act.⁷

¹ *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

² *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

³ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

⁴ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

⁵ SUPRA.

⁶ Id. at 553, 633 P.2d at 362.

⁷ A.R.S. § 33-1476, et seq.

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The second issue is whether the lower court abused its discretion in denying Appellant's request to postpone the special detainer trial. An appellate court reviews a trial court's rulings on a motion to continue or to postpone a trial for an abuse of discretion.⁸ Because the Appellant's request for a continuance was beyond the time permitted by A.R.S. § 33-1485(c) - not more than three days in a justice court, or five days in the superior court⁹ - the lower court did not err by denying Appellant's motion to continue. This Court finds no abuse of discretion.

The third issue is whether the lower court erred in denying Appellant's motion to dismiss, and in concluding that Appellant's conduct constituted a material and irreparable violation of his lease. The appellate court has jurisdiction to review a denial of a motion to dismiss for abuse of discretion.¹⁰ However, because this case involves an issue of statutory interpretation, the appellate court must review it *de novo*.¹¹ A careful review of A.R.S. § 33-1476(d)(3) reveals that statute does not contain an exclusive list of crimes that may constitute a material and irreparable breach of the lease agreement. I conclude that theft of a vehicle of another tenant is an activity that constitutes a material and irreparable noncompliance. There is sufficient evidence to support the lower court's conclusion that Appellant's conduct constituted a material and irreparable violation of his lease.

The final issue to be addressed is whether the lower court had jurisdiction to award attorney's fees. The issue of attorney's fees has not been reduced to a final order, award or judgment, and as such is not a proper subject for appeal.

IT IS THEREFORE ORDERED affirming the judgment of the West Phoenix Justice Court.

⁸ *State v. Lloyd*, 118 Ariz. 106, 574 P.2d 1325 (App. 1978).

⁹ Requires "good cause supported by an affidavit."

¹⁰ *State v. Hansen*, 156 Ariz. 291, 294 P.2d 954 (1988).

¹¹ *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996).

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IT IS FURTHER ORDERED remanding this case back for all further and future proceedings to the West Phoenix Justice Court.